MONTANA LEGISLATIVE HISTORY

Chapter 152 1999

Bill H _____ S 187 Original bill & history ✓C

H. Committee on Agriculture		S. Committee on Business & Industry	
Hearing Date(s) 3/2	___C	Hearing Date(s) 1/20	___C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3/4	___C	out ~~3/4~~ 1/20	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

Senate BILL NO. 187

INTRODUCED BY TESTER Watt
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CROP DUSTING LIEN PROCEDURE BY REMOVING THE REQUIREMENT THAT 30 DAYS' NOTICE OF INTENT BE GIVEN PRIOR TO FILING OF A LIEN; AND AMENDING SECTION 71-3-902, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-902, MCA, is amended to read:

"**71-3-902. How lien obtained.** (1) ~~Any~~ A person, firm, corporation, or partnership that is entitled to a lien under this part shall, within 90 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125.

(2) A person, firm, corporation, or partnership that is entitled to a lien and that intends to file a lien under this part shall give ~~30 days'~~ notice, by certified mail, of intent to file to the person, firm, corporation, or partnership for which labor or service was performed or materials furnished."

- END -

INTRODUCED BILL
SB 187

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

1999 Session

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC1351 Current Bill Text
Bill Type - Number: SB 187
Short Title: Revise crop dusting lien
Primary Sponsor: Jon Tester

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/24/1999			
(S) Signed by Governor	03/23/1999			
(S) Transmitted to Governor	03/22/1999			
(H) Signed by Speaker	03/19/1999			
(S) Signed by President	03/18/1999			
(C) Sent to Printing	03/18/1999			
(S) Returned from Enrolling	03/17/1999			
(S) Sent to Enrolling	03/16/1999			
(S) 3rd Reading Passed as Amended by House	03/16/1999	46	3	
(S) Scheduled for 3rd Reading	03/16/1999			
(S) 2nd Reading House Amendments Concurred	03/15/1999	49	0	
(S) Scheduled for 2nd Reading	03/15/1999			
(H) Returned to Senate with Amendments	03/10/1999			
(H) 3rd Reading Concurred	03/10/1999	96	3	
(H) Scheduled for 3rd Reading	03/10/1999			
(C) Sent to Printing	03/09/1999			
(H) 2nd Reading Concurred	03/09/1999	95	3	
(H) Scheduled for 2nd Reading	03/09/1999			
(C) Sent to Printing	03/08/1999			
(H) Committee Report--Bill Concurred as	03/08/1999			(H) Agriculture

Amended				
(H) Committee Executive Action--Bill Concurred as Amended	03/04/1999	19	0	(H) Agriculture
(H) Hearing	03/02/1999			(H) Agriculture
(H) Referred to Committee	02/16/1999			(H) Agriculture
(H) First Reading	02/16/1999			
(S) Transmitted to House	01/22/1999			
(S) 3rd Reading Passed	01/22/1999	50	0	
(S) Scheduled for 3rd Reading	01/22/1999			
(S) 2nd Reading Passed	01/21/1999	49	0	
(S) Scheduled for 2nd Reading	01/21/1999			
(S) Committee Report--Bill Passed	01/20/1999			(S) Business and Industry
(S) Committee Executive Action--Bill Passed	01/20/1999	6	0	(S) Business and Industry
(S) Hearing	01/20/1999			(S) Business and Industry
(C) Introduced Bill Text Available Electronically	01/12/1999			
(S) Referred to Committee	01/12/1999			(S) Business and Industry
(S) First Reading	01/12/1999			
(S) Introduced	01/12/1999			
(C) Draft Delivered to Requester	01/08/1999			
(C) Draft Ready for Delivery	01/08/1999			
(C) Draft in Assembly/Executive Director Review	01/06/1999			
(C) Draft in Final Drafter Review	01/06/1999			
(C) Draft in Input/Proofing	01/06/1999			
(C) Bill Draft Text Available Electronically	01/06/1999			
(C) Draft to Drafter/Edit Review (CAJ)	01/06/1999			
(C) Draft in Edit	01/06/1999			
(C) Draft in Legal Review	01/06/1999			
(C) Draft to Requester for Review	01/04/1999			
(C) Draft Request Received	12/22/1998			

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Tester	Jon	
Drafter	Sternberg	Doug	
Primary Sponsor	Tester	Jon	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Agriculture (see also: Livestock)		Simple	AGR
Secured Transactions		Simple	SECT

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 152
DEADLINE
Category: General Bills
Transmittal Date: 02/24/1999
Return (with 2nd house amendments) Date: 04/01/1999

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	23-MAR-99	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

11/18/2003 11:28 AM Mountain Time
| Look Up Bill Information | Committee and Hearing Information |

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Current Senate Agenda	Senate Journals	Daily Senate Floor Actions
Legislator Information	Reports Directories

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MONTANA ONLINE

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 20, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 187, 1/14/1999;
SB 189, 1/14/1999
Executive Action: SB 187

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 187

Sponsor: **SENATOR JON TESTER, SD 45, BIG SANDY**

Proponents: **Bob Gilbert, MT Aviation Trade Assoc.**
Wayne Turner, MT Aviation Trades Assoc.
Darrold Hutchinson,
Bob Stephens, MT Grain Growers Assoc.

Opponents: **None**

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, BIG SANDY. Senate Bill 187 is before you this morning. It is a simple and to-the-point bill. This bill revises the statute to take away the thirty days from the notice. This will give the crop-dusting sector an opportunity to get paid on a timely basis. The necessity for this as times have changed over the years is applications are being applied closer to the time of harvest. So consequently, it is fairly critical these people have an opportunity to be able to get their money as quickly as possible before that crop is sold and given to someone else. They still have to notify by certified mail, but they don't have to wait at the end of the food chain.

Proponents' Testimony:

Bob Gilbert, MT Aviation Trades Assoc. and the Assoc. of MT Aerial Applicators. I researched lien laws and this is the only lien law I could find on the statutes that requires you to wait for any period of time before you notify the individual of your intent to file a lien. Most of the lien laws on the books in Montana say you must have a lien filed within 20 to 30 days at the end of that service rather than waiting 30 days before you can send them a certified letter telling them you intend to file a lien. This flies in the face of every other lien law on the books. It is a hardship to the members of the Association who do the spraying; therefore, we'd like to strike the 30 day requirement for notice of intent.

Wayne Turner, MT Aviation Trades Assoc. We would like to strike the 30 days notification because nowadays some products can be applied much closer to harvest.

Darrold Hutchinson, Association of Montana Aerial Applicators. This change in **SB 187** does provide for more timely filing of a lien. I would urge you to pass this bill.

Bob Stephens, Montana Grain Growers Association. We support **SB 187.**

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 4.5}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked why weeds were not included in the bill. **SEN. TESTER** said it was in there automatically; the reason for spraying the grain is to kill the weeds.

SEN. BEA MCCARTHY said in some places in her area they spray just weeds and that wasn't covered -- it was not grain nor crop; rather, noxious weeds. **Wayne Turner** said whenever the ground is covered, and it says "crop" it can include pastures or range land. So it would cover any agricultural product that might be protected and applies not only to weeds but also to insect pests. Some of those products can be applied up to 15 days before harvest and that's the kind of problem we have with current law. If we have to wait for up to 15 days before harvest and then have to wait 30 days before we can file a lien then the crop can come off and we wouldn't have access to it.

SEN. MCCARTHY asked if the bill would be more what she and **SEN. SPRAGUE** were looking for if "noxious weeds" was inserted because there was no crop in the area she was referring to. **Bart Campbell** referred to 7-3-901 which said who may have a lien and its amount. The lien is for someone who does crop-dusting or spraying grains or crops, etc..... The lien is on the grain. You can't put a lien on the person that wants a field sprayed just to clear the weeds.

SEN. VICKI COCCHIARELLA asked how often the liens are applied. **Wayne Turner** said in 35 years he had used it only a few times. Unfortunately, with the present economic conditions it may be used a few more times by a few more operators.

SEN. COCCHIARELLA commented the way it worked now was the 90 day thing has to do with the time the application is done. **Mr. Turner** said they had 90 days from the time the last service was performed on the crop in order to file. But they had to give 30

days certified notice before they could file. You could end up with only 60 days left. Typically, winter crops are sprayed in early May and spring crops in early to mid-June. Then you're given 90 days from that time to file a lien. A person doesn't want to file a lien unless necessary and a grower doesn't want a lien filed against him either. If the grower has borrowed from the bank, the crop grown on the land will be listed as collateral. Near the end of the growing season, if the 90 days is coming close and I haven't received payment, I have to give 30 days before I can file a lien. If I spray in May but don't bill until the end of May, I've already used up 30 days. At the end of 60 days I would have to give 30 days notice before I can even file and that's where the problem is.

SEN. MCCARTHY asked if **Mr. Turner** ever received partial payment before he flew and was told he never had.

{Tape : 1; Side : A; Approx. Time Counter : 10.4}

Closing by Sponsor:

SEN. JON TESTER. The bill basically deals with economics. In order for these folks to maintain a viable business they've got to get the money for the services rendered. To take it a step further, if someone in agriculture doesn't pay the bills, the bills are put on to me and my neighbors in order to make up the difference. I think it's very important and I encourage a DO PASS.

EXECUTIVE ACTION ON SB 187

Motion/Vote: **SEN. MCCARTHY** moved that **SB 187 DO PASS. Motion carried unanimously 6-0.**

HEARING ON SB 189

Sponsor: **SEN. DALE BERRY, SD 30, Hamilton**

Proponents: **Zane Sullivan, Montana Association of Realtors**

Opponents: **None.**

Opening Statement by Sponsor: **SEN. DALE BERRY, SD 30, Hamilton.** Before I start my testimony, I'd like to distribute an amendment **EXHIBIT(1)**. If you scan all the way through the bill, and if you look at the deletions and additions, you'll see that it's a good bill. There are clean-ups and simplifications of old statutes and language and a few things that come about because of referrals outside the lines of the country. There are also a few changes because of the Board of Realty licensing time -- it mandated some things to see that continuing education requirements were kept on a current basis.

Proponents' Testimony: **Zane Sullivan, Montana Association of Realtors.** I would like to discuss the four parts of the bill with you. This bill was sponsored by **SEN. BERRY** at the request of the Montana Association of Realtors and in conjunction with the Board of Realty Regulations, Department of Commerce. It is a clean-up, housekeeping bill and is a much simpler bill than it appears. I would like to explain:

Section 1, Section 37-51-306. The reason for the requested change is at the present time the licensing laws for real estate licensees permit them to pay a referral fee to a licensee from another state. However, the current trend is people come to our area from Canada who wish to purchase property and are directed or referred by a Canadian broker to a real estate licensee in Montana. Current law pertains to referral fees payable only to licensees within other states so the question seems to be is it legal for a Montana broker to pay a referral fee to a foreign broker. The Association of Licensed Law Officials has suggested a uniform change in the various jurisdictions which is "state or jurisdiction" as a means of resolving this issue. I am not aware of any reason why a referral fee should not be payable to a licensed broker in another country the same as a state within the United States.

Section 2, Section 37-51-310. It has been, until recently, the Board of Realty Regulation's position that licenses were renewed on an annual basis. As a condition of renewing your license, you were required to provide to the Board staff proof you had completed the credit requirement for the continuing education. There are approximately 5,000 licensees in Montana, which requires a great amount of staff time and expense to complete the paperwork for annual renewal. The Board's suggestion the licenses be renewed every four (4) years should help alleviate

that; however, there is another problem, i.e. how does the Board of Realty Regulation ensure that real estate licensees have obtained the credit hours needed to meet continuing education requirements. There may be as many as 300 licensees who have not provided proof of their continuing education, and 300 contested case proceedings would be an equal burden so the Board is trying to find a way around that by requiring the licensees to provide proof they have completed their education requirements. If they do not provide that proof, or if they are unable to show good cause why they haven't provided that proof, the Board may suspend their license. Opportunity is provided for the licensees to ask for a hearing if they don't agree. So it is a means to deal with those few individuals who may just refuse to respond.

Section 3, Section 37-51-313 - Section 4, Section 37-51-314. This part was worked on in the 1995 Session but was rather confusing, both to real estate licensees and consumers as to who represented whom. The Montana Association of Realtors attempted to correct the problem by making a multiple disclosure to both sides repeatedly during the course of the transaction. That was a good idea but is extremely complex and I'm not sure the consumers are following a lot of the paperwork; perhaps many licensees are not following the paperwork either. But there has been some good, i.e. the number of complaints to the Board of Realty Regulation has declined as have the number of lawsuits; therefore, perhaps we accomplished our goal. The basic request in this section is to simplify the paperwork process -- we are mandating the substance but not the wording of the requirement. Also, the disclosure is a two-process disclosure -- the licensee, at the time of listing, provides a notice on one (1) sheet to the owner which lists the relationships available and agrees on the one to fit that particular relationship. When a buyer comes along and the negotiations commence, the disclosure says the licensee is representing the seller and you will be represented by your buying agent.

Section 5, Section 37-51-321. Current law requires anyone who is operating as a franchise, for example, Century 21, Better Homes & Gardens, Coldwell Bankers, etc., that any advertising you do requires you to put in a sentence saying each company is independently owned and operated. All we have seen since that was enacted was an increase in cost to the licensee because more lines had to be added to their advertising. What benefit does the consumer derive from that requirement? The law was initially

requested by the franchise company to try to insulate themselves from any potential lawsuits because they didn't want to be sued if the licensee was sued. I'm not sure that is appropriate because it has been in place for many years and I am not aware of any lawsuits or complaints to the Board of Realty Regulation relative to it; therefore, there would be no detriment to the consumer by deleting this provision, but would be a benefit to the licensee because the cost would not be increased.

Section 6, Repealer. These statutes concern the out-of-state sales of in-state subdivision registration process enacted in 1963 and is a provision most people are not familiar with. It is a process that if you're going to advertise out-of-state to sell five (5) or more parcels, five (5) acres or more in size, this subdivision has to be registered with the Board of Realty Regulation, you have to put up a $2,500 deposit, you must put in your advertising certain notifications that if there are encumbrances on the property any proceeds will be held in escrow until they are paid and you will provide other forms of notification to the Board of Realty Regulation. To my knowledge, no one has ever filed a registration under this statute. I question this law is relevant anymore because times have changed -- we are now more concerned about Internet advertising than we are about newspaper advertising. Many states, through the Board of Realty Regulation, are currently looking at rules for real estate licensees relevant to interstate advertising by the Internet and the Board is currently proposing rules for licensees on Internet advertising. I think Internet advertising regulation will be more pertinent than the current statute here. Also, it seems we're attacking this issue from the wrong end because most states have a law that if someone from another state is going to advertise real estate within their jurisdiction, certain requirements have to be met in the state in which the advertising is done. That is more pertinent than for Montanans to regulate the advertising that will be done in another state. It's unused, is out-of-date, and is superceded by other uniform laws in areas that are more useful than this. I suggest it be deleted from the law.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 28.4}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked if it was legal to pay a referral fee to a licensed individual but not to a layman. **Zane Sullivan** said that was correct. The licensee can either be in Montana or in another state.

SEN. MCCARTHY asked if it was necessary to have the bill effective upon passage & approval, or could it wait until October 1. **Mr. Sullivan** said the reason for the effective date being "upon passage and approval" was to try to implement the mechanisms of the disclosure. As for the rest of the things, time is that critical.

SEN. MIKE SPRAGUE said some of the repealers implied that if a person was going to advertise and market out-of-state, they were there for the person who was advertising falsely. There will be more regional advertising, reciprocity, etc. **Mr. Sullivan** said it was part of the Foreign Land Sales Practices Act, where one part of the Act referred to out-of-staters who brought falsely advertised properties into Montana and tried to pawn them off on Montana residents. It's rather a do-nothing act which would require more money and staff time to enforce than is available.

SEN. SPRAGUE commented we don't know the rules in foreign countries and if a Montana opportunist wants to market outside our state, all you have is the state's credibility. That wouldn't really apply to other states regulating themselves. **Zane Sullivan** agreed we didn't know the laws in foreign countries and if someone in Montana is marketing falsely advertised property in Japan, Montana's reputation could be affected. We're not being effective in that area either.

{Tape : 1; Side : A; Approx. Time Counter : 37.6}

SEN. MCCARTHY referred to the sections for which repeal was asked and wondered if false property advertising could be prevented if those sections were enforced, i.e. mountaintop property by Great Falls. **Mr. Sullivan** said it would depend on whether the property is advertised and sold to people outside Montana, whether they were advertised and sold within Montana as well and whether they were sold by real estate licensees. If they were sold within Montana, the issues could have been addressed in any event. If,

however, they are advertised only outside Montana with no real estate licensee involved, effective enforcement of this section could prevent the problem.

SEN. MCCARTHY asked if the Board had looked at the examples and were they sincere they should be repealed. **Mr. Sullivan** said none of this information is being transferred to the Board of Realty Regulation. To my knowledge, the Board of Realty Regulation has received no complaints relative to failure to file a subdivision under this Act.

SEN. GLENN ROUSH asked for clarification of "continuing education" -- do you actually attend classes or can you get it through a newsletter, etc. **Zane Sullivan** said the current requirement was they take approved courses and one of the requirements for an approved course was they provide the enrollee with a certificate. The licensee submits an affidavit to the staff of the Board which says he or she has taken the course. It is estimated that as many as 300 people per year don't submit an affidavit. What do you do with those people?

{Tape : 1; Side : A; Approx. Time Counter : 42}

SEN. VICKI COCCHIARELLA asked about definition of "adverse material facts." **Mr. Sullivan** said it was the initial disclosure given the seller by the listing broker or buyers representative and contained the definition of what was an adverse material fact.

SEN. COCCHIARELLA said she saw the definition in the deleted language but wondered where it would be now. **Mr. Sullivan** said it appeared in statute 37-51-313, or at least somewhere in the definition section of the licensing law.

SEN. COCCHIARELLA asked if there was anything else that was not being done for the consumer when the language was crossed out.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Zane Sullivan said (first few words lost when turning the tape)...no, some licensees felt it was overkill and perhaps it may be. But it still seems important to tell both sides. The

amount of paper is cut down and the content can be made smaller; however, certain elements must still be there.

SEN. JOHN HERTEL asked about the amendments **EXHIBIT(1)** and asked the reason for the changes. **Mr. Sullivan** said they should have gotten into the original draft but didn't. Amendment #1 "replace the duties" was current law and this was just a typographical error. The rest of the amendments were self-explanatory.

SEN. SPRAGUE asked for explanation why all the repealers were necessary -- he was trying to look out for unintended consequences. **Zane Sullivan** said that is a registration act and if parts were removed while others remained, serious damage will result to the effectiveness of the act. The Board's concern was it was an unused provision that isn't being enforced or utilized. But if the legislature feels very strongly it should stay, it probably isn't a life or death issue.

{Tape : 1; Side : B; Approx. Time Counter : 4.8}

Closing by Sponsor:

SEN. DALE BERRY. I sat on the Board of Realty Regulation up until my election to the Legislature. It is an extremely busy Board -- they read up to 1,000 pages per month of complaints and some of these issues never come up, i.e. trying to monitor a subdivision, mountaintop property in Great Falls, etc. I am a practitioner in real estate who works with clients and who is constantly working on upgrading the forms, etc., and trying to simplify them. When you sit down as a broker with the buyer and go through each disclosure, they're not interested in the bulky and confusing language. **SB 189** cleans this up.

ADJOURNMENT

Adjournment: 9:56 A.M.

Sen J Hertel

SEN. JOHN HERTEL, Chairman

Mary Gay Wells

MARY GAY WELLS, Secretary

JH/MGW

MONTANA SENATE
1999 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL

DATE 1/20/99

NAME	PRESENT	ABSENT	EXCUSED
SEN. DALE BERRY	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. BEA MC CARTHY	✓		
SEN GLENN ROUSH	✓		
SEN. FRED THOMAS			✓
SEN MIKE SPRAGUE, VICE CHAIRMAN	✓		
SEN. JOHN HERTEL, CHAIRMAN	✓		

NAME Wayne Turner

ADDRESS Big Sandy MT

HOME PHONE 378-2534 WORK PHONE Same

REPRESENTING MT Aviation Trades Assn.

APPEARING ON WHICH PROPOSAL? SB187

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETAR

DATE Jan. 20, 1999

SENATE COMMITTEE ON [redacted] Bus. + Ind.

BILLS BEING HEARD TODAY: SB 187 + 189

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Wayne Turner	MT. Aviation Trades Assn	187	X	
ZANE SULLIVAN	MT. Assoc. of REALTORS	189	X	
Darrold Hutchinson	Ass. of Mt Ind Appraisers	187	X	
Bob Stephens	MT Grain Growers	187	X	
Bob Gilbert	MATA NAMRA	187	X	
Pam Langley	Montana AgriBusiness Assn	187	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

LEGISLATIVE TAPE LOG

COMMITTEE: Senate Bus / Industry

DATE: 1/20/99

MINUTES	CONTENT NOTES
9:00 a.m.	Opening on SB 187
	Sponsor: Sen. Jon Tester, SD
	Proponents
1.9	Bob Gilbert, MT Aviation Trade Assn # 2
3.1	Wayne Turner, MT " " "
3.6	Darrel Hutchinson, Himself # 2
4.1	Bob Stevens, Mt. Grain Growers Assn.
	Opponents
	None
	Questions From the Committee
4.5	Sprague – Tester
	McCarthy – ~~Tester~~ Turner
6.4	McCarthy – Bart
7.6	Cocchiarella – Turner
	" – "
10.1	McCarthy – Turner
10.4	Closing by Sen. Jon Tester on SB 187
11.2	Executive Action on SB 187
	McCarthy DO PASS on SB 187
	Unanimous 6-0

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN JOE BARNETT**, on March 4, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R)
Rep. John L. Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Paul Clark (D)
Rep. Rick Dale (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Mary Anne Guggenheim (D)
Rep. Donald L. Hedges (R)
Rep. Verdell Jackson (R)
Rep. Rick Jore (R)
Rep. Monica Lindeen (D)
Rep. Gay Ann Masolo (R)
Rep. Sam Rose (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bob Story (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Cliff Trexler (R)

Members Absent: Rep. Bill Eggers (D)

Staff Present: Joyce Bankhead, Committee Secretary
Todd Everts, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 187, SB 327
Posted 3/1/99
Executive Action: SB 187, SB 196, SB 327, SB 394

HEARING ON SB 327

Opening Statement by Sponsor:
Senator Gerry Devlin, SD 2.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 2.3}

EXECUTIVE ACTION ON SB 327

Motion/Vote: **REP. ROSE** moved that **SB 327 BE TABLED. Motion carried 14-2 with Masolo and Story voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 2.3 - 3.5}

HEARING ON SB 196

Opening Statement by Sponsor:
Senator Ken Mesaros, SD 25.
{Tape : 1; Side : A; Approx. Time Counter : 3.5 - 6.7}

Proponents' Testimony:
Marc Bridges, Acting Director for the Board of Livestock and Dept. of Livestock
EXHIBIT(agh49a01)EXHIBIT(agh49a02)EXHIBIT(agh49a03)
{Tape : 1; Side : A; Approx. Time Counter : 6.7 - 8.5}

Bob Hanson, Vice Pres. MT Farm Bureau and rancher
{Tape : 1; Side : A; Approx. Time Counter : 8.5 - 9.8}

Bill Garrison, Vice Pres. MT Stockgrowers and rancher
{Tape : 1; Side : A; Approx. Time Counter : 9.8 - 13.2}

Ron DeYong, MT Farmers Union
{Tape : 1; Side : A; Approx. Time Counter : 13.2 - 13.5}

Jim Peterson, MT Stockgrowers
also written testimony by Don Ross, Director of MT Stockgrowers Assn. **EXHIBIT(agh49a04)**
{Tape : 1; Side : A; Approx. Time Counter : 13.5 - 17.3}

Larry Deschumaker, rancher from Lewistown
{Tape : 1; Side : A; Approx. Time Counter : 17.3 - 18.1}

Opponents' Testimony:
NONE
{Tape : 1; Side : A; Approx. Time Counter : 18.1 - 18.3}

Questions from Committee Members and Responses:
Reps. Jackson, Jore, and Clark to Mesaros
{Tape : 1; Side : A; Approx. Time Counter : 18.3 - 23.6}
Reps. Clark and Holden to MT State Vet.
{Tape : 1; Side : A; Approx. Time Counter : 23.6 - 26.7}
Rep. Barnett to Hanson
{Tape : 1; Side : A; Approx. Time Counter : 26.7 - 27.5}

Closing by the Sponsor:
Sen. Mesaros closed the Hearing on SB 196
{Tape : 1; Side : A; Approx. Time Counter : 27.5 - 28.5}

EXECUTIVE ACTION ON SB 196

Motion/Vote: **REP. ROSE** moved that **SB 196 BE CONCURRED IN. Motion carried 19-0.**
{Tape : 1; Side : A; Approx. Time Counter : 28.5 - 29.2}

Rep. Story asked to have the Dept. of Livestock talk about the $100 fee for the brands (SB 327). Rep. Holden, without objection, asked Marc Bridges, Dept. of Livestock to come up for questions. Reps. Story asked why the Dept. of Livestock was raising the fee from $50 to $100. Marc said fees are based on costs. Rep. Holden asked how many brands per year were re-recorded. Marc answered that 60,000 - 65,000 notices were sent out. Rep. Rose made the comment that he had lots of unhappy phone calls. He suggested that the Board of Livestock send out information on reasons for fee increase. Marc responded that the Board of Livestock is meeting soon and will go through the rule making process. Rep. Masolo asked how many brands per family are registered? Marc responded that some families have 12 -15 brands.
{Tape : 1; Side : A; Approx. Time Counter : 29.2 - 29.8}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 10}

Chairman Barnett gave the gavel to Lenhart.

EXECUTIVE ACTION ON SB 187

Motion: **REP. MASOLO** moved that **SB 187 BE CONCURRED IN.**
Motion/Vote: **REP. MASOLO** moved that **SB 187 BE AMENDED. Motion carried 19-0.EXHIBIT(agh49a05)**

Motion: **REP. MASOLO** moved that **SB 187 BE CONCURRED IN AS AMENDED.**

Discussion: Rep. Adams asked on the wording should be "shall" or "may". Todd Everts explained that "shall" was the appropiate word. Rep. Hedges and Barnett discuss.

Vote: Motion **carried 19-0.**
{Tape : 1; Side : B; Approx. Time Counter : 10 - 15.3}

EXECUTIVE ACTION ON SB 394

Motion: **REP. GUGGENHEIM** moved that **SB 394 BE CONCURRED IN.**

Discussion: Reps. Jore, Holden, Adams, Hedges, Clark, Guggenheim, Masolo and Smith.

Vote: Motion **carried 17-2 with Adams and Jore voting no.**
{Tape : 1; Side : B; Approx. Time Counter : 15.3 - 28.7}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 8.1}

Chairman Barnett explained the procedure for the Hearing on HB 643 for 3/18/99.

ADJOURNMENT

Adjournment: 4:08 P.M.

REP. JOE BARNETT, Chairman

JOYCE BANKHEAD, Secretary

JB/JB

EXHIBIT(agh49aad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **VICE CHAIRMAN RALPH LENHART**, on March 2, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Paul Clark (D)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Mary Anne Guggenheim (D)
Rep. Donald L. Hedges (R)
Rep. Verdell Jackson (R)
Rep. Rick Jore (R)
Rep. Monica Lindeen (D)
Rep. Gay Ann Masolo (R)
Rep. Sam Rose (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bob Story (R)
Rep. Bill Thomas (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. John L. Holden, Vice Chairman (R)

Members Absent: None.

Staff Present: Joyce Bankhead, Committee Secretary
Todd Everts, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 91, SB 187, SB 394
Posted 2/23/99
Executive Action: SB 91

HEARING ON SB 91

Opening Statement by Sponsor:
Senator Charles Swysgood, SB17.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 2.6}

Proponents' Testimony:
Doug Monger, FWP **EXHIBIT(agh47a01)**
{Tape : 1; Side : A; Approx. Time Counter : 2.6 - 4.8}

Katrina Scheuerman, MT Audubon
{Tape : 1; Side : A; Approx. Time Counter : 4.8 - 5.2}

Lorna Karn, MT Farm Bureau
{Tape : 1; Side : A; Approx. Time Counter : 5.2 - 6.1}

Ken Hoovestol, Walleyes Unlimited of MT
{Tape : 1; Side : A; Approx. Time Counter : 6.1 - 6.5}

Opponents' Testimony:
NONE
{Tape : 1; Side : A; Approx. Time Counter : 6.5 - 6.9}

Questions from Committee Members and Responses:
Reps. Rose, Hedges, Story, and Clark to Monger
{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 14.8}

Closing by the Sponsor:
Senator Swysgood closed the Hearing on SB 91.
{Tape : 1; Side : A; Approx. Time Counter : 14.8 - 17.8}

HEARING ON SB 394

Opening Statement by Sponsor:
Senator Jon Tester, SB 45
{Tape : 1; Side : A; Approx. Time Counter : 17.8 - 20.8}

Proponents' Testimony:
Bob Quinn, organic farmer by Big Sandy
{Tape : 1; Side : A; Approx. Time Counter : 20.8 - 27.1}
EXHIBIT(agh47a02)

Bob Stephens, MT Grain Growers
{Tape : 1; Side : A; Approx. Time Counter : 27.1 - 27.5}

Mark Mackin, NW MT Farm Improvement Committee and Organic Certification Assn. of MT
{Tape : 1; Side : A; Approx. Time Counter : 27.5 - 30}
EXHIBIT(agh47a03)

Craig Sweet,MT Public Interest Research Group
{Tape : 1; Side : A; Approx. Time Counter : 30 - 30.6}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 1.2}

Ron DeYong, MT Farmers Union
{Tape : 1; Side : B; Approx. Time Counter : 1.2 - 4.7}

Ralph Peck, Director - Dept. of Ag.
{Tape : 1; Side : B; Approx. Time Counter : 4.7 - 5.3}

David Oien, farmer North of Conrad & Timeless Seeds, Inc.
EXHIBIT(agh47a04)
{Tape : 1; Side : B; Approx. Time Counter : 5.3 - 11.7}

Al Kurki, Grants program research USDA
{Tape : 1; Side : B; Approx. Time Counter : 11.7 - 13.4}

Opponents' Testimony:
NONE
{Tape : 1; Side : B; Approx. Time Counter : 13.4 - 13.9}

Questions from Committee Members and Responses:
Rep. Hedges to Peck
{Tape : 1; Side : B; Approx. Time Counter : 13.9 - 16.7}
Reps. Guggenheim, Masolo, Jore and Story to Tester
{Tape : 1; Side : B; Approx. Time Counter : 16.7 - 28.6}
Rep. Story to Peck and Tester
{Tape : 2; Side : A; Approx. Time Counter : 0 - 6}
Reps. Rose and Adams to Tester
{Tape : 2; Side : A; Approx. Time Counter : 6 - 8.2}
Rep. Clark to Peck and Tester
{Tape : 2; Side : A; Approx. Time Counter : 8.2 - 14.4}
Rep. Guggenheim to Peck
{Tape : 2; Side : A; Approx. Time Counter : 14.4 - 16.2}
Rep. Adams to Peck and Bob Quinn
{Tape : 2; Side : A; Approx. Time Counter : 16.2 - 19.2}

Closing by the Sponsor:
Sen. Tester closed the Hearing on SB 394.
{Tape : 2; Side : A; Approx. Time Counter : 19.2 - 20.5}

HEARING ON SB 187

Opening Statement by Sponsor:
Senator Jon Tester, SB 45.
{Tape : 2; Side : A; Approx. Time Counter : 20.5 - 22.6}

Proponents' Testimony:
Bob Gilbert, MT Aviation Trades Assoc. and Assoc. of MT Aerial Applicators
{Tape : 2; Side : A; Approx. Time Counter : 22.6 - 24.9}

Pam Langley, MT AgriBusiness Assn.
{Tape : 2; Side : A; Approx. Time Counter : 24.9 - 27.1}

Bob Stephens, MT Growers Assn.
{Tape : 2; Side : A; Approx. Time Counter : 27.1 - 27.3}

Opponents' Testimony:
NONE
{Tape : 2; Side : A; Approx. Time Counter : 27.3 - 27.6}

Informational Witness:
Arla Jean Murray
{Tape : 2; Side : A; Approx. Time Counter : 27.6 - 28.8}

Questions from Committee Members and Responses:
Rep. Rose to Langley
{Tape : 2; Side : A; Approx. Time Counter : 28.8 - 29.8}
Rep. Trexler to Gilbert
{Tape : 2; Side : A; Approx. Time Counter : 29.8 - 30.8}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 0.5}
Rep. Clark to Gilbert
{Tape : 2; Side : B; Approx. Time Counter : 0.5 - 2.2}

Closing by the Sponsor;
Sen. Tester closes the Hearing on SB 187.
{Tape : 2; Side : B; Approx. Time Counter : 2.2 - 4}

EXECUTIVE ACTION ON SB 91

Motion/Vote: **REP. MASOLO** moved that **SB 91 BE CONCURRED IN.** **Motion carried 18-1 with Rose voting no.**
{Tape : 2; Side : B; Approx. Time Counter : 4 - 7.1}

ADJOURNMENT

Adjournment: 4:32 P.M.

REP. JOE BARNETT, Chairman

JOYCE BANKHEAD, Secretary

JB/JB

EXHIBIT(agh47aad)

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 20, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 187, 1/14/1999;
SB 189, 1/14/1999
Executive Action: SB 187

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 187

Sponsor: **SENATOR JON TESTER, SD 45, BIG SANDY**

Proponents: **Bob Gilbert, MT Aviation Trade Assoc.**
Wayne Turner, MT Aviation Trades Assoc.
Darrold Hutchinson,

Bob Stephens, MT Grain Growers Assoc.

Opponents: **None**

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, BIG SANDY. Senate Bill 187 is before you this morning. It is a simple and to-the-point bill. This bill revises the statute to take away the thirty days from the notice. This will give the crop-dusting sector an opportunity to get paid on a timely basis. The necessity for this as times have changed over the years is applications are being applied closer to the time of harvest. So consequently, it is fairly critical these people have an opportunity to be able to get their money as quickly as possible before that crop is sold and given to someone else. They still have to notify by certified mail, but they don't have to wait at the end of the food chain.

Proponents' Testimony:

Bob Gilbert, MT Aviation Trades Assoc. and the Assoc. of MT Aerial Applicators. I researched lien laws and this is the only lien law I could find on the statutes that requires you to wait for any period of time before you notify the individual of your intent to file a lien. Most of the lien laws on the books in Montana say you must have a lien filed within 20 to 30 days at the end of that service rather than waiting 30 days before you can send them a certified letter telling them you intend to file a lien. This flies in the face of every other lien law on the books. It is a hardship to the members of the Association who do the spraying; therefore, we'd like to strike the 30 day requirement for notice of intent.

Wayne Turner, MT Aviation Trades Assoc. We would like to strike the 30 days notification because nowadays some products can be applied much closer to harvest.

Darrold Hutchinson, Association of Montana Aerial Applicators. This change in **SB 187** does provide for more timely filing of a lien. I would urge you to pass this bill.

Bob Stephens, Montana Grain Growers Association. We support **SB 187.**

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 4.5}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked why weeds were not included in the bill. **SEN. TESTER** said it was in there automatically; the reason for spraying the grain is to kill the weeds.

SEN. BEA MCCARTHY said in some places in her area they spray just weeds and that wasn't covered -- it was not grain nor crop; rather, noxious weeds. **Wayne Turner** said whenever the ground is covered, and it says "crop" it can include pastures or range land. So it would cover any agricultural product that might be protected and applies not only to weeds but also to insect pests. Some of those products can be applied up to 15 days before harvest and that's the kind of problem we have with current law. If we have to wait for up to 15 days before harvest and then have to wait 30 days before we can file a lien then the crop can come off and we wouldn't have access to it.

SEN. MCCARTHY asked if the bill would be more what she and **SEN. SPRAGUE** were looking for if "noxious weeds" was inserted because there was no crop in the area she was referring to. **Bart Campbell** referred to 7-3-901 which said who may have a lien and its amount. The lien is for someone who does crop-dusting or spraying grains or crops, etc..... The lien is on the grain. You can't put a lien on the person that wants a field sprayed just to clear the weeds.

SEN. VICKI COCCHIARELLA asked how often the liens are applied. **Wayne Turner** said in 35 years he had used it only a few times. Unfortunately, with the present economic conditions it may be used a few more times by a few more operators.

SEN. COCCHIARELLA commented the way it worked now was the 90 day thing has to do with the time the application is done. **Mr. Turner** said they had 90 days from the time the last service was performed on the crop in order to file. But they had to give 30 days certified notice before they could file. You could end up with only 60 days left. Typically, winter crops are sprayed in early May and spring crops in early to mid-June. Then you're given 90 days from that time to file a lien. A person doesn't want to file a lien unless necessary and a grower doesn't want a lien filed against him either. If the grower has borrowed from the bank, the crop grown on the land will be listed as collateral. Near the end of the growing season, if the 90 days is coming close and I haven't received payment, I have to give 30 days before I can file a lien. If I spray in May but don't bill until the end of May, I've already used up 30 days. At the end of 60 days I would have to give 30 days notice before I can even file and that's where the problem is.

SEN. MCCARTHY asked if **Mr. Turner** ever received partial payment before he flew and was told he never had.

{Tape : 1; Side : A; Approx. Time Counter : 10.4}

Closing by Sponsor:

SEN. JON TESTER. The bill basically deals with economics. In order for these folks to maintain a viable business they've got to get the money for the services rendered. To take it a step further, if someone in agriculture doesn't pay the bills, the bills are put on to me and my neighbors in order to make up the difference. I think it's very important and I encourage a DO PASS.

EXECUTIVE ACTION ON SB 187

Motion/Vote: **SEN. MCCARTHY** moved that **SB 187 DO PASS. Motion carried unanimously 6-0.**

HEARING ON SB 189

Sponsor: **SEN. DALE BERRY, SD 30, Hamilton**

Proponents: **Zane Sullivan, Montana Association of Realtors**

Opponents: **None.**

Opening Statement by Sponsor: **SEN. DALE BERRY, SD 30, Hamilton.** Before I start my testimony, I'd like to distribute an amendment **EXHIBIT(bus15a01)**. If you scan all the way through the bill, and if you look at the deletions and additions, you'll see that it's a good bill. There are clean-ups and simplifications of old statutes and language and a few things that come about because of referrals outside the lines of the country. There are also a few changes because of the Board of Realty licensing time -- it mandated some things to see that continuing education requirements were kept on a current basis.

Proponents' Testimony: **Zane Sullivan, Montana Association of Realtors.** I would like to discuss the four parts of the bill with you. This bill was sponsored by **SEN. BERRY** at the request of the Montana Association of Realtors and in conjunction with the Board of Realty Regulations, Department of Commerce. It is a clean-up, housekeeping bill and is a much simpler bill than it appears. I would like to explain:

Section 1, Section 37-51-306. The reason for the requested change is at the present time the licensing laws for real estate licensees permit them to pay a referral fee to a licensee from another state. However, the current trend is people come to our area from Canada who wish to purchase property and are directed or referred by a Canadian broker to a real estate licensee in Montana. Current law pertains to referral fees payable only to licensees within other states so the question seems to be is it legal for a Montana broker to pay a referral fee to a foreign broker. The Association of Licensed Law Officials has suggested a uniform change in the various jurisdictions which is "state or jurisdiction" as a means of resolving this issue. I am not aware of any reason why a referral fee should not be payable to a licensed broker in another country the same as a state within the United States.

Section 2, Section 37-51-310. It has been, until recently, the Board of Realty Regulation's position that licenses were renewed on an annual basis. As a condition of renewing your license, you were required to provide to the Board staff proof you had completed the credit requirement for the continuing education. There are approximately 5,000 licensees in Montana, which requires a great amount of staff time and expense to complete the paperwork for annual renewal. The Board's suggestion the licenses be renewed every four (4) years should help alleviate that; however, there is another problem, i.e. how does the Board of Realty Regulation ensure that real estate licensees have obtained the credit hours needed to meet continuing education requirements. There may be as many as 300 licensees who have not provided proof of their continuing education, and 300 contested case proceedings would be an equal burden so the Board is trying to find a way around that by requiring the licensees to provide proof they have completed their education requirements. If they do not provide that proof, or if they are unable to show good cause why they haven't provided that proof, the Board may suspend their license. Opportunity is provided for the licensees to ask for a hearing if they don't agree. So it is a means to deal with those few individuals who may just refuse to respond.

Section 3, Section 37-51-313 - Section 4, Section 37-51-314. This part was worked on in the 1995 Session but was rather confusing, both to real estate licensees and consumers as to who represented whom. The Montana Association of Realtors attempted to correct the problem by making a multiple disclosure to both sides repeatedly during the course of the transaction. That was a good idea but is extremely complex and I'm not sure the consumers are following a lot of the paperwork; perhaps many licensees are not following the paperwork either. But there has been some good, i.e. the number of complaints to the Board of Realty Regulation has declined as have the number of lawsuits;

therefore, perhaps we accomplished our goal. The basic request in this section is to simplify the paperwork process -- we are mandating the substance but not the wording of the requirement. Also, the disclosure is a two-process disclosure -- the licensee, at the time of listing, provides a notice on one (1) sheet to the owner which lists the relationships available and agrees on the one to fit that particular relationship. When a buyer comes along and the negotiations commence, the disclosure says the licensee is representing the seller and you will be represented by your buying agent.

Section 5, Section 37-51-321. Current law requires anyone who is operating as a franchise, for example, Century 21, Better Homes & Gardens, Coldwell Bankers, etc., that any advertising you do requires you to put in a sentence saying each company is independently owned and operated. All we have seen since that was enacted was an increase in cost to the licensee because more lines had to be added to their advertising. What benefit does the consumer derive from that requirement? The law was initially requested by the franchise company to try to insulate themselves from any potential lawsuits because they didn't want to be sued if the licensee was sued. I'm not sure that is appropriate because it has been in place for many years and I am not aware of any lawsuits or complaints to the Board of Realty Regulation relative to it; therefore, there would be no detriment to the consumer by deleting this provision, but would be a benefit to the licensee because the cost would not be increased.

Section 6, Repealer. These statutes concern the out-of-state sales of in-state subdivision registration process enacted in 1963 and is a provision most people are not familiar with. It is a process that if you're going to advertise out-of-state to sell five (5) or more parcels, five (5) acres or more in size, this subdivision has to be registered with the Board of Realty Regulation, you have to put up a $2,500 deposit, you must put in your advertising certain notifications that if there are encumbrances on the property any proceeds will be held in escrow until they are paid and you will provide other forms of notification to the Board of Realty Regulation. To my knowledge, no one has ever filed a registration under this statute. I question this law is relevant anymore because times have changed -- we are now more concerned about Internet advertising than we are about newspaper advertising. Many states, through the Board of Realty Regulation, are currently looking at rules for real estate licensees relevant to interstate advertising by the Internet and the Board is currently proposing rules for licensees on Internet advertising. I think Internet advertising regulation will be more pertinent than the current statute here. Also, it seems we're attacking this issue from the wrong end because most states have a law that if someone from another state is going to

advertise real estate within their jurisdiction, certain requirements have to be met in the state in which the advertising is done. That is more pertinent than for Montanans to regulate the advertising that will be done in another state. It's unused, is out-of-date, and is superceded by other uniform laws in areas that are more useful than this. I suggest it be deleted from the law.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 28.4}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked if it was legal to pay a referral fee to a licensed individual but not to a layman. **Zane Sullivan** said that was correct. The licensee can either be in Montana or in another state.

SEN. MCCARTHY asked if it was necessary to have the bill effective upon passage & approval, or could it wait until October 1. **Mr. Sullivan** said the reason for the effective date being "upon passage and approval" was to try to implement the mechanisms of the disclosure. As for the rest of the things, time is that critical.

SEN. MIKE SPRAGUE said some of the repealers implied that if a person was going to advertise and market out-of-state, they were there for the person who was advertising falsely. There will be more regional advertising, reciprocity, etc. **Mr. Sullivan** said it was part of the Foreign Land Sales Practices Act, where one part of the Act referred to out-of-staters who brought falsely advertised properties into Montana and tried to pawn them off on Montana residents. It's rather a do-nothing act which would require more money and staff time to enforce than is available.

SEN. SPRAGUE commented we don't know the rules in foreign countries and if a Montana opportunist wants to market outside our state, all you have is the state's credibility. That wouldn't really apply to other states regulating themselves. **Zane Sullivan** agreed we didn't know the laws in foreign countries and if someone in Montana is marketing falsely advertised property in Japan, Montana's reputation could be affected. We're not being effective in that area either.

{Tape : 1; Side : A; Approx. Time Counter : 37.6}

SEN. MCCARTHY referred to the sections for which repeal was asked and wondered if false property advertising could be prevented if those sections were enforced, i.e. mountaintop property by Great Falls. **Mr. Sullivan** said it would depend on whether the property is advertised and sold to people outside Montana, whether they were advertised and sold within Montana as well and whether they were sold by real estate licensees. If they were sold within Montana, the issues could have been addressed in any event. If, however, they are advertised only outside Montana with no real estate licensee involved, effective enforcement of this section could prevent the problem.

SEN. MCCARTHY asked if the Board had looked at the examples and were they sincere they should be repealed. **Mr. Sullivan** said none of this information is being transferred to the Board of Realty Regulation. To my knowledge, the Board of Realty Regulation has received no complaints relative to failure to file a subdivision under this Act.

SEN. GLENN ROUSH asked for clarification of "continuing education" -- do you actually attend classes or can you get it through a newsletter, etc. **Zane Sullivan** said the current requirement was they take approved courses and one of the requirements for an approved course was they provide the enrollee with a certificate. The licensee submits an affidavit to the staff of the Board which says he or she has taken the course. It is estimated that as many as 300 people per year don't submit an affidavit. What do you do with those people?

{Tape : 1; Side : A; Approx. Time Counter : 42}

SEN. VICKI COCCHIARELLA asked about definition of "adverse material facts." **Mr. Sullivan** said it was the initial disclosure given the seller by the listing broker or buyers representative and contained the definition of what was an adverse material fact.

SEN. COCCHIARELLA said she saw the definition in the deleted language but wondered where it would be now. **Mr. Sullivan** said it appeared in statute 37-51-313, or at least somewhere in the definition section of the licensing law.

SEN. COCCHIARELLA asked if there was anything else that was not being done for the consumer when the language was crossed out.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Zane Sullivan said (first few words lost when turning the tape)...no, some licensees felt it was overkill and perhaps it

may be. But it still seems important to tell both sides. The amount of paper is cut down and the content can be made smaller; however, certain elements must still be there.

SEN. JOHN HERTEL asked about the amendments **EXHIBIT 1** and asked the reason for the changes. **Mr. Sullivan** said they should have gotten into the original draft but didn't. Amendment #1 "replace the duties" was current law and this was just a typographical error. The rest of the amendments were self-explanatory.

SEN. SPRAGUE asked for explanation why all the repealers were necessary -- he was trying to look out for unintended consequences. **Zane Sullivan** said that is a registration act and if parts were removed while others remained, serious damage will result to the effectiveness of the act. The Board's concern was it was an unused provision that isn't being enforced or utilized. But if the legislature feels very strongly it should stay, it probably isn't a life or death issue.

{Tape : 1; Side : B; Approx. Time Counter : 4.8}

Closing by Sponsor:

SEN. DALE BERRY. I sat on the Board of Realty Regulation up until my election to the Legislature. It is an extremely busy Board -- they read up to 1,000 pages per month of complaints and some of these issues never come up, i.e. trying to monitor a subdivision, mountaintop property in Great Falls, etc. I am a practitioner in real estate who works with clients and who is constantly working on upgrading the forms, etc., and trying to simplify them. When you sit down as a broker with the buyer and go through each disclosure, they're not interested in the bulky and confusing language. **SB 189** cleans this up.

ADJOURNMENT

Adjournment: 9:56 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT(bus15aad)